



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J-5

DISTRIBUTION: A, C, S

CJCSI 2410.01B

1 May 2001

GUIDANCE FOR THE EXERCISE OF RIGHT-OF-ASSISTANCE ENTRY

References: See Enclosure C.

1. Purpose. This instruction establishes uniform policy for the exercise of the right-of-assistance entry (RAE) by US military ships or aircraft within the territorial seas or archipelagic waters of foreign states
2. Cancellation. CJCSI 2410.01A, 23 April 1997, is canceled.
3. Applicability. This instruction applies to the CINCs, Services, and the Directors for Operations and Strategic Plans and Policy, Joint Staff. Copies are provided to the Secretary of State, Secretary of Defense, and the Commandant of the Coast Guard for information and use as appropriate.
4. Background
 - a. For centuries, mariners have recognized a humanitarian duty to rescue persons in distress due to perils of the sea, regardless of their nationality or location. The international community has long accepted the right of vessels of any nation to enter a foreign state's territorial sea to engage in good faith efforts to render emergency assistance. RAE is independent of the customary international legal rights of innocent passage, transit passage, and archipelagic sea-lanes passage reference (a).
 - b. Following incidents in which US vessels on scene failed to assist ships in distress because of excessive concern about entry into the territorial sea of another state, the Department of Defense, DOS, and US Coast Guard reviewed USG policy. This resulted in the Departments issuing a unified statement of policy concerning RAE within the

territorial sea of another state reference (a).

c. The UN Law of the Sea Convention reference (b) provides that ships of all states enjoy the right of innocent passage through the territorial sea of other states. Article 18 of reference (b) provides that passage includes stopping and anchoring for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress. Article 52 also provides that innocent passage applies in archipelagic waters in accordance with Part II, section 3, of reference (b). As the regime of innocent passage now applies to archipelagic waters, it follows that the right-of-assistance entry is equally applicable to archipelagic waters.

d. This instruction implements reference (a) and extends it to include archipelagic waters. This instruction applies in all cases except those specifically covered by prior agreements or understandings with foreign states that address assistance to persons, ships, or aircraft in their territorial seas or archipelagic waters. Enclosure B of this instruction discusses international agreements with Canada, the United Kingdom, and Mexico that impact rights-of-assistance Entry (Chapter 7 and Appendix B of reference (c)).

5. Policy

a. RAE applies only to rescues in which the location of the persons or property in danger or distress is reasonably well known. The right does not extend to conducting area searches for persons or property in danger or distress when their location is not yet reasonably well known reference (a). US forces will conduct area searches within US-recognized foreign territorial seas or archipelagic waters only with the permission of the coastal state. Such permission may be by international agreement, such as a search and rescue (SAR) agreement with that state reference (c), at Appendix B). When considering conducting area searches within claimed or US-recognized foreign territorial seas or archipelagic waters, commanders should comply with the provisions of references (c) and (d) for search and rescue.

b. RAE into the territorial sea or archipelagic waters of a foreign state involves 2 conflicting principles: (1) the right of nations to regulate entry into and the operations within territory under their sovereignty and (2) the time-honored mariners' imperative to render rapid and effective assistance to persons, ships, or aircraft in imminent peril at sea without regard to nationality or location.

c. The operational commander on the scene (hereafter, referred to as operational commander) must determine whether RAE is appropriate under the circumstances. The test is whether a person, ship, or aircraft,

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whose position within the territorial sea or archipelagic waters of another state is reasonably well known, is in danger or distress due to perils of the sea, and requires emergency assistance.

d. In determining whether to undertake RAE actions, operational commanders must consider the safety of the military ships and aircraft they command and of their crews, as well as the safety of persons, ships, and aircraft in danger or distress. Operational commanders, as part of their safety evaluation for ships, aircraft, and crew, should make a separate assessment of force protection considerations based upon all available information. These should be weighed in light of the long-standing duty to render aid to those in peril on the seas.

e. Operational commanders should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

f. The customary international law of RAE is more fully developed for vessels than for aircraft. Moreover, while a right of innocent passage exists for vessels through the territorial seas, no such right exists for aircraft in the airspace above the territorial seas – that is considered “national airspace” reference (b). Unauthorized entry into national airspace would normally be considered a breach of that state’s sovereignty. Therefore, the operational commander should consider the possible reaction of the coastal or archipelagic state, if the operational commander intends to employ military aircraft in national airspace. (See Enclosure A to this instruction for additional guidance). USG position has been that aircraft engaged in RAE are an extension of the vessels conducting RAE and, as such, those flights are consistent with the “duty to render assistance” described in reference (b), Article 98, and reference (d), Enclosure A, subparagraph 8(e).

g. Although exercise of RAE does not require the permission of the foreign coastal or archipelagic state, operational commanders should notify that state’s authorities of the entry in order to promote international comity, avoid misunderstanding, and alert local rescue and medical assets.

h. Because of the implications for international relations and for US security, operational commanders should keep appropriate authorities and the National Military Command Center (NMCC) informed, (Enclosure A, subparagraph 4a of this instruction).

i. RAE actions should comply with any applicable international agreements, which address RAE, including those described in Enclosure B of this instruction and those in reference (c), Enclosure B.

j. Reference (e) is the DOD source document for determining the scope of a particular maritime claim (e.g., extent of a claimed territorial sea) and whether or not that particular maritime claim is recognized by the United States.¹ The fact that the United States has conducted an operational freedom of navigation assertion or sent a protest note regarding a particular coastal state claim can be taken as nonrecognition of the claim in question. Otherwise, the territorial sea of a coastal state or the archipelagic waters of an archipelagic state will be regarded as presumptively valid for the purposes of this instruction.²

k. The self-defense policies set forth in this instruction and in reference (f) are consistent with reference (d).

l. If US Naval units operating under USCG operational control or tactical control conduct RAE operations, those units will follow the use-of-force and weapons policy issued by the Commandant, USCG reference (f), but only to the extent of the use of warning shots and disabling fire per 14 United States Code 637. DOD units operating under USCG operational control or tactical control retain the authority and obligation to use all necessary means available and to take all appropriate actions in unit self-defense in accordance with reference (e).

6. Definitions

a. Archipelagic waters. An archipelagic state is one that is constituted wholly of one or more groups of islands. Such states may draw straight archipelagic baselines joining the outermost points of their outermost islands, providing the ratio of water to land within the baselines is between 1 to 1 and 9 to 1. The waters enclosed within properly drawn archipelagic baselines are called “archipelagic waters” and are subject to the archipelagic state’s sovereignty reference (b). To date, the United States has recognized only 2 archipelagic states, Indonesia and Jamaica. Other nations may qualify for such status in the future reference (e).

b. Danger or distress. For purposes of this instruction, danger or distress is clearly an apparent risk of death, disabling injury, loss, or significant damage.

¹ The Maritime Claims Reference Manual is available on the web at: <http://web7.whs.mil/html/20051m.htm>, however, the MCRM is not necessarily up-to-date and commanders should consult fleet directives to check the validity of foreign claims.

² The Department of State’s, “Limits of the Seas” series and the U.S. Naval War College International Law Studies, Volume 66, “Excessive Maritime Claims,” Roach and Smith (1994) are secondary sources for determining whether and to what extent a particular country’s maritime claims are considered excessive by the United States.

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c. Emergency assistance. For purposes of this instruction, emergency assistance is a rescue action that must be taken without delay to avoid significant risk of death or serious injury or the loss of or major damage to a ship or aircraft.

d. Military ships and aircraft. For purposes of this instruction, a US military ship is either a warship designated "USS" or an auxiliary in the Military Sealift Command (MSC) force. For the purposes of this instruction, a US military aircraft is an aircraft operated by a unit of the US Armed Forces, bearing military markings, and commanded and manned by personnel of the Armed Forces. This also applies to US Coast Guard vessels and aircraft when operating under the operational command of the Navy. When not under operational command of the Navy, Coast Guard vessels and aircraft continue to be recognized as military vessels and aircraft; however, the Coast Guard's own policies on RAE apply.³

e. Operational commander on the scene [operational commander]. The operational commander is the senior officer in tactical command of the unit(s) capable of rendering meaningful and timely assistance. This operational commander is responsible for coordinating rescue efforts at the site.

f. Perils of the sea. Perils of the sea are accidents and dangers peculiar to maritime activities including storms, waves, and wind; grounding; fire, smoke, and noxious fumes; flooding, sinking, and capsizing; loss of propulsion or steering; and other hazards of the sea.

g. Territorial sea. For purposes of this instruction, the territorial seas is the belt of ocean measured seaward up to 12 nm from a state's baselines determined in accordance with international law and subject to the state's sovereignty reference (b). The United States does not recognize the portions of claimed territorial sea more than 12 nm from properly drawn baselines. Unless a "straight baseline" has been recognized, the normal baseline is the low-water line. The United States does not recognize the validity of most straight baselines currently claimed reference (e).

7. Responsibilities

a. The Chairman of the Joint Chiefs of Staff will monitor the exercise of RAE and develop further procedural guidance for the CINCs and the Service Chiefs under the overall DOD policy guidance.

³ 14 United States Code, Section 1.

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b. The CINCs will issue policy guidance and specific procedural reporting requirements tailored to their areas of regional responsibility and the forces under their operational control.

c. The NMCC will follow routine procedures to coordinate with cognizant DOS and US Coast Guard officials to ensure timely notification, review, and response to CINCs and operational commanders in RAE situations.

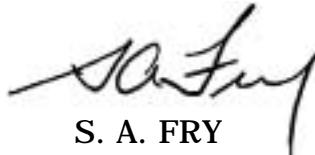
d. The Military Services will provide training on RAE operations, coordination, and communications procedures.

e. Guidance for operational commanders is contained in Enclosure A of this instruction.

8. Summary of Changes. This revision updates CJCSI 2410.01A to reflect additional reference to the international law principles contained in the UN Convention on the Law of the Sea and to reflect US policy updates consistent with changes contained in the other references.

9. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other Federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page--<http://www.dtic.mil/doctrine>. Copies are also available through the Government Printing Office on the Joint Electronic Library CD-ROM.

10. Effective Date. This instruction is effective upon receipt.



S. A. FRY
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Enclosure:

- A - Guidance for Operational Commanders
- B - International Agreements Affecting Right-of-Assistance Entry
- C - References

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ENCLOSURE A

GUIDANCE FOR OPERATIONAL COMMANDERS

1. The operational commander of a US military ship should exercise RAE and immediately enter a foreign state's US-recognized territorial sea or archipelagic waters when all three following conditions are met:

- a. A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires emergency assistance.
- b. The location is reasonably well known.
- c. The US military ship is in a position to render timely and effective assistance. Although not a required condition, the operational commander should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route. Military ships conducting RAE operations will not deploy aircraft (including helicopters) within a US-recognized foreign territorial sea or archipelagic waters unless paragraphs 2 or 3 below apply.

2. An operational commander may render emergency assistance employing US military aircraft in a US recognized foreign territorial sea or archipelagic waters under RAE only when the operational commander determines that all four following conditions apply:

- a. A person, ship, or aircraft in the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires emergency assistance.
- b. The location is reasonably well known.
- c. The US military aircraft is able to render timely and effective assistance. If available, unarmed aircraft will be used to conduct RAE activities.
- d. Any delay in rendering assistance could be life-threatening.

Although not a required condition, the operational commander should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

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3. An operational commander may render assistance in non-life-threatening situations employing US military aircraft in a US-recognized foreign territorial sea or archipelagic waters under RAE when the following two conditions are met:

a. The conditions in subparagraphs 2 a, b, and c above are met.

b. The cognizant CINC or other appropriate authority in the operational chain of command has specifically authorized the exercise of RAE employing aircraft. Before authorizing RAE employing aircraft, such higher authority will consult with the Department of State (Operations Center) by contacting the NMCC reference (a).

4. When an operational commander enters or authorizes entry into the claimed or US-recognized territorial sea or archipelagic waters of a foreign state under RAE, the operational commander will immediately notify:

a. Appropriate authorities and the NMCC by an OPREP-3 PINNACLE. The OPREP-3 PINNACLE will describe location; unit(s) involved; nature of the emergency assistance; reaction by the coastal or archipelagic state, including efforts to deny entry or offers of assistance; and estimated time to complete the mission. The NMCC will immediately inform the DOS (Operations Center) and Headquarters, US Coast Guard (Flag Plot). (USCG HQ is prepared to facilitate contacting foreign state rescue authorities to notify them of the RAE operation, as appropriate.) The cognizant Chief of Mission and US Defense Attache Office (USDAO) will be information addressees.

b. The coastal or archipelagic state, by the fastest means available, of the location, unit(s) involved, nature of the emergency and assistance required, whether any assistance is needed from that government, and estimated time of departure from the territorial sea or archipelagic waters. Contact will normally be with the Rescue Coordination Center of the foreign state involved.

c. Although exercise of RAE does not require the permission of the foreign coastal or archipelagic state, commanders should notify that state's authorities of the entry in order to promote international comity, avoid misunderstanding, and alert local rescue and medical assets.

ENCLOSURE B

INTERNATIONAL AGREEMENTS AFFECTING RIGHT-OF-ASSISTANCE ENTRY

1. This instruction applies only in cases not covered by an existing international agreement or other international arrangements with the coastal state concerned reference (a), paragraph V).
2. Significant international agreements or international arrangements that modify the application of this guidance are discussed below reference (c), Appendix B).

a. Canada and the United Kingdom. Memorandum of Understanding between the US Coast Guard, the US Air Force, Canadian Departments of Defense and Fisheries, and the United Kingdom Ministries of Defense and Environment.⁴

(1) This understanding states that in accordance with customary international law, solely for the purposes of rendering emergency rescue assistance to persons, vessels, or aircraft in danger or distress, when the location is reasonably well known, SAR units of either country may immediately enter into or over the territory or the territorial seas of the other country, with notification of such entry made as soon as practicable.

(2) Pursuant to this understanding, operational commanders should notify the nearest Rescue Coordination Centre (RCC). (Upon receipt by the NMCC of the OPREP-3 required in subparagraph 4a, Enclosure A of this instruction, the NMCC will notify US Coast Guard Headquarters, which will arrange contact with the appropriate RCC.)

b. Mexico. Treaty to Facilitate Assistance to and Salvage of Vessels in Territorial Waters.⁵

⁴ Memorandum of Understanding for Co-Operation among the Department of National Defence of Canada, the Department of Fisheries and Oceans of Canada, The United States Coast Guard, the United States Air Force, the United Kingdom Maritime and Coastguard Agency, the United Kingdom Civil Aviation Division of the Department of Environment, Transport and the Regions, and the United Kingdom Ministry of Defence Concerning Search and Rescue, 1999.

⁵ Treaty for the sending of vessels for purposes of assistance and salvage, 13 June 1935, T.I.A.S. No. 905, 49 Stat. 3359, entry into force March 7, 1936.

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(1) This treaty permits vessels and rescue equipment of either country to assist vessels (and crews) of their own nationals that are disabled or in distress within the territorial waters or on the shores of the other country:

(a) Within a 720-nm radius of the intersection of the international boundary line and the Pacific Coast.

(b) Within a 200-nm radius of the intersection of the international boundary line and the coast of the Gulf of Mexico.

(2) The treaty requires the operational commander to send notice of entry to assist a distressed vessel to appropriate authorities of the other country at the earliest possible moment. Assistance efforts may proceed unless the authorities advise that such assistance is unnecessary.

(3) In this treaty, assistance means any act that helps prevent injury arising from a marine peril to persons or property, and the term vessel includes aircraft.

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ENCLOSURE C

REFERENCES

- a. "Statement of Policy by the Department of State, the Department of Defense, and the United States Coast Guard Concerning Exercise of the Right of Assistance Entry," 8 August 1986, reprinted in, the Commander's Handbook on the Law of Naval Operations, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.1), Chapter 2, Annex A2-2.
- b. United Nations Convention on Law of the Sea, of December 10, 1982, 21 I.L.M 1261 (1982) and implementation of part XI of United Nations Convention on Law of the Sea of July 28, 1994, 33I.L.M. 1311 (1994).
- c. United States National Search and Rescue Supplement to the International Aeronautical and Maritime Search and Rescue Manual, May 2000.
- d. CJCSI 3121.01 (series), Standing Rules of Engagement.
- e. DOD 2500.1M (series), "Maritime Claims Reference Manual".
- f. Commandant of the Coast Guard "Use of Force Policy", COMDTINST M16247 (series).

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